

CITY OF SAN JOSÉ, CALIFORNIA Department of Planning, Building and Code Enforcement 801 North First Street, Room 400 San José, California 95110-1795	Hearing Date/Agenda Number P.C. 1/22/03      Item: 3.d
STAFF REPORT	File Number CP02-072
	Application Type Conditional Use Permit
	Council District 10
	Planning Area Edenvale
	Assessor's Parcel Number(s) 464-29-015

PROJECT DESCRIPTION	Completed by: Teresa Estrada
Location: Northeast corner of State Route 85 and State Route 87 (Gunderson High School)	
Gross Acreage: 31.8	Net Acreage: 31.8      Net Density: N/A
Existing Zoning: R-1-1 Residence	Existing Use: High School
Proposed Zoning: R-1-1 Residence	Proposed Use: Wireless communications antenna (monopole) & associated equipment

GENERAL PLAN	Completed by: TE
Land Use/Transportation Diagram Designation Public/Quasi-Public	Project Conformance: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> See Analysis and Recommendations

SURROUNDING LAND USES AND ZONING	Completed by: TE
North: Single-family detached residential	R-1-8 Residence and R-1-(PD)
East: Single-family detached residential	R-1-8 Residence
South: State Route 85, Single-family detached residential	R-1-8 Residence
West: Undeveloped and Multi-family attached residential	A- Agriculture and A(PD) Planned Development
Completed by: TE	
<input type="checkbox"/> Environmental Impact Report found complete <input type="checkbox"/> Negative Declaration circulated on _____ <input type="checkbox"/> Negative Declaration adopted on _____	<input checked="" type="checkbox"/> Exempt <input type="checkbox"/> Environmental Review Incomplete

FILE HISTORY	Completed by: TE
Annexation Title: Downer No. 8	Date: June 5, 1972

PLANNING DEPARTMENT RECOMMENDATIONS AND ACTION		
<input checked="" type="checkbox"/> Approval <input type="checkbox"/> Approval with Conditions <input type="checkbox"/> Denial <input type="checkbox"/> Uphold Director's Decision	Date: _____	Approved by: _____ <input checked="" type="checkbox"/> Action <input type="checkbox"/> Recommendation

OWNER	APPLICANT/DEVELOPER	ENGINEER
San Jose Unified School District C/o Chuck Corr 855 Lenzen Ave. San Jose CA 95126	Ellen Magnie Cingular Wireless 4420 Rosewood Drive Bldg. 2 Pleasanton, CA 94589	Zachary Carter Ruth & Going P.O. Box 26460 San Jose, CA 95159-6460

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PUBLIC AGENCY COMMENTS RECEIVED

Completed by: TE

Department of Public Works

None received.

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Other Departments and Agencies

None received.

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GENERAL CORRESPONDENCE

None received.

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ANALYSIS AND RECOMMENDATIONS**BACKGROUND**

The applicant, Verizon Wireless, is requesting a Conditional Use Permit to re-permit the previous installation of a 50-foot tall wireless communications monopole antenna on an existing 46-foot tall baseball field net support pole at Gunderson High School located in the R-1-1 Residence Zoning District. The Zoning Ordinance requires a Conditional Use Permit for installation of a wireless communication antenna in the R-1-1 Residence District.

The proposed monopole doubles as a support pole for the existing protective net that extends alongside the baseball field. The existing 46 foot high baseball net is held-up by six 50 foot tall poles. There are currently two other such identical monopoles at this ball field. The original permit for this project, CP96-103, which was approved in 1997 for Pacific Bell, was actually the first such proposal of this kind. This permit, as originally conditioned was valid for five (5) years, but has since expired. Since the original approval, the two other similar proposals were approved, the second being for AT&T Wireless in April, 2001 (File No. CP00-11-076), and the most recent approval granted for Verizon Wireless (CP01-060) in late 2001. As previously approved, the adjacent equipment enclosure is placed a few feet from the base of the monopole. In this instance, the equipment area measures 20 feet x 12 feet.

The net and adjacent baseball field are located on the backside of Gunderson High School next to the southerly property line. The field is directly adjacent to State Highway 85 and the off-ramp to Highway 87. Vacant land exists to the west. Single-family detached houses exist on the opposite side of the school to the north and east. The closest residential structures located on Rutherglen Place are approximately 700 feet from the baseball net.

In 1996, San Jose planning staff explored the issues of electromagnetic radiation to determine if emissions from the proposed antennas posed a public health hazard. Staff found that the low-frequency, low energy, non-ionizing emission associated with wireless communications antennas were well below the recognized safety standards set by the American National Standards Institute (ANSI). Staff concluded there was no evidence that such transmission would result in adverse health effects to people living or working in the vicinity of the antennas. Further, staff investigated reports that wireless communication transmission interfered with hearing aids, pace makers, and other electronic devices. Staff determined the reported interference resulted from cordless telephones and not from antennas.

## ENVIRONMENTAL REVIEW

Under the provisions of Section 15301 of the State Guidelines for Implementation of the California Environmental Quality Act (CEQA) as stated below, this project is found to be exempt from the environmental review requirements of Title 21 of the San José Municipal Code, implementing the California Environmental Quality Act of 1970, as amended.

## GENERAL PLAN CONFORMANCE

The proposed use is consistent with the San José 2020 General Plan Land Use/Transportation Diagram designation of Public/Quasi Public in that wireless communication antennas are considered a public/quasi-public use.

## ANALYSIS

The original Conditional Use Permit for this wireless antenna facility included approval with a time limit of five (5) years. Time conditions were and still are typically included in such projects to afford an opportunity to reassess whether technological changes could result in a project alternative than is more attractive or less visually obtrusive than that which was constructed. Although, the monopole and other related equipment are still in place, the expiration of the original permit nullifies any potential legal non-conforming rights that the existing facility would otherwise maintain. A timely renewal to amend the expiration date of the previous Conditional Use Permit was not filed. Therefore, for purposes of this analysis, this proposal should be evaluated as a “new” project based on current policies and ordinances that are in effect rather than those which were in place at the time of the original approval.

The key issues analyzed for the proposed project are conformance with the following: 1) San José 2020 General Plan Urban Design Policies, 2) Zoning Ordinance, and 3) City Council Policy 6-23 for Wireless Communication Facilities.

### Conformance to General Plan Urban Design Policies

This project conforms to the San Jose 2020 General Plan Urban Design Policies for communications structures in the Public/Quasi Public land use designation in that: 1) the site is adjacent to an arterial street, 2) the structure is designed or located to significantly minimize its visibility, and 3) the proposal is consistent with applicable height policies for such structures.

The project provides visual amenities, such as camouflage painting and architectural integration, to offset the potential visual impacts associated with the project. Because the antenna is integrated into the design of the existing baseball net, the visual impacts are negligible. The equipment is appropriately painted and screened by a fence and will not impact the line of sight from State Route 85.

The applicant has been able to demonstrate the technical necessity for locating the subject antennas near residential uses in that this predominantly residential area is not currently served well by cellular facilities and that there are limited opportunities to locate area-serving antennas in this geographical area. Further, the installation of well-concealed or discrete monopoles, such as this, will result in a reduction in the potential need for other less desirable freestanding monopoles in the vicinity.

### Conformance to the Zoning Ordinance

This project conforms to all applicable zoning requirements with regard to placement, height and design. Wireless communications antennas are listed in the Zoning Ordinance as a “conditional uses” in all of the residential zoning districts. The Zoning Ordinance states that the maximum height of a wireless communication antenna may be increased over the required maximum height of the zoning district in which it is located up to a maximum of sixty feet provided that the design of the antenna is a “slim” pole, such as proposed in this instance.

### Conformance to City Council Policy 6-23 for Wireless Communications Facilities

The proposed project complies with the intent of the City Council policy. The policy does not generally encourage the placement of monopoles on sites with residential or other designations such as Public/Quasi-Public, in order to prevent visual impacts on residential uses. Although this site has a land use designation of Public/Quasi-Public, the specific location of the this monopole is at the back of a school site, adjacent to a freeway and well separated from existing residential uses by as much as 700 feet. This proposal therefore, complies with the “intent” of the policy. The unique application of a monopole as a support for a baseball fence represents a creative alternative to conventional free-standing monopoles, thereby complying with the policy objective to minimize public visibility as a communications device or facility. The project will not displace any required parking in accordance with the policy.

## **RECOMMENDATION**

The Planning staff recommends that the Planning Commission approve the requested Conditional Use Permit and include the following findings and conditions in its Resolution.

The Planning Commission finds that the following are the relevant facts regarding this proposed project:

1. This site has a designation of Public/Quasi Public on the adopted San José 2020 General Plan Land Use/Transportation Diagram.
2. The project site is located in the R-1-1 Residence Zoning District.
3. Under the provisions of Section 15301 of the State Guidelines for Implementation of the California Environmental Quality Act (CEQA) as stated below, this project is found to be exempt from the environmental review requirements of Title 21 of the San José Municipal Code, implementing the California Environmental Quality Act of 1970, as amended.
4. The project proposes the re-permitting of a 46-foot tall communications antenna monopole adjacent to an existing baseball field to serve as a support for the extension of the protective perimeter net.
5. The project provides a fenced 12 x 20 foot associated equipment yard adjacent to the antenna.
6. The baseball net is located on a parcel of land owned by San Jose Unified School District adjacent to State Route 85.

7. The antenna is located in excess of 700 feet horizontally from adjacent single-family residences.
8. The proposed project will not eliminate required parking.
9. The Zoning Ordinance allows monopoles on residentially zoned properties provided that they do not exceed 60 feet in height, provided that they are “slim” pole designs.
10. The City Council Land Use Policy for Wireless Communications Facilities is applicable to this application.

This Planning Commission concludes and finds, based upon an analysis of the above facts that:

1. The proposed project is consistent with the adopted San José 2020 General Plan Land Use/Transportation Diagram designation and relevant urban design policies.
2. The proposed project complies with all applicable provisions of the Zoning Ordinance.
3. The proposed project is in compliance with the California Environmental Quality Act.
4. The proposed project substantially complies with the applicable criteria of the City Council Land Use Policy for Wireless Communications Facilities.

Finally, based upon the above-stated findings and subject to the conditions set forth below, the Planning Commission finds that:

1. The proposed use at the location requested will not
  - a. Adversely affect the peace, health, safety, morals or welfare of persons residing or working in the surrounding area; or
  - b. Impair the utility or value of property of other persons located in the vicinity of the site; or
  - c. Be detrimental to public health, safety or general welfare; and
2. The proposed site is adequate in size and shape to accommodate the yards, walls, fences, parking and loading facilities, landscaping and other development features prescribed in this title, or as is otherwise required in order to integrate said use with the uses in the surrounding areas; and
3. The proposed site is adequately served:
  - a. By highways or streets of sufficient width and improved as necessary to carry the kind and quality of traffic such use would generate; and
  - b. By other public or private service facilities as are required.

In accordance with the findings set forth above, a Conditional Use Permit to use the subject property for said purpose specified above and subject to each and all of the conditions hereinafter set forth is hereby granted. This Planning Commission expressly declares that it would not have granted this permit except upon and subject to each and all of said conditions, each and all of which conditions shall run with the land and be binding upon the owner and all subsequent owners of the subject property, and all persons who use the subject property for the use conditionally permitted hereby.

### CONDITIONS PRECEDENT

This Conditional Use Permit shall have no force or effect and the subject property shall not be used for the hereby permitted uses unless and until all things required by the below-enumerated precedent conditions shall have been performed or caused to be performed and this Resolution has been recorded with the County Recorder.

1. **Acceptance and Payment of Recording Fees.** The "Acceptance of Permit and Conditions" form shall be **signed, notarized, and returned** to the Department of City Planning within **60 days** from the date of issuance of the resolution granting the permit. *Failure to do so will result in this permit automatically expiring regardless of any other expiration date contained in this permit.* Fees for recording a Certificate of Permit with the Recorder for the County of Santa Clara must be submitted along with the Acceptance Form.

### CONCURRENT CONDITIONS

The subject property shall be maintained and utilized in compliance with the below-enumerated conditions throughout the life of the permit:

1. **Conformance with Plans.** Construction and development shall conform to approved development plans entitled, "Cingular Wireless Gunderson High School 622 Gaundabert Lane San Jose, CA SF 520" dated July 30, 2002, on file with the Department of City Planning and Building and to the San José Building Code (San José Municipal Code, Title 24).
2. **Nuisance.** This use shall be operated in a manner, which does not create a public or private nuisance. The applicant must abate any such nuisance immediately upon notice by the City.
3. **Construction Hours.** Construction shall be limited to the hours of 7:00 a.m. and 7:00 p.m. Monday through Friday for any on-site or off-site work within 500 feet of any residential unit.
4. **Lighting.** This permit allows no new on-site lighting.
5. **Tree Removals.** No tree larger than 56 inches in circumference, at a height 24 inches above the natural grade slope, may be removed without a Tree Removal Permit issued by the Director of Planning.
6. **Utilities.** All new on-site telephone and electrical service facilities shall be placed underground.

7. **Colors and Materials.** All wireless communications building-mounted antennas colors and materials are to be those specified on the approved plan set and shall match the existing structure. Equipment cabinet color shall be dark green to blend in with native landscaping.
8. **Building Clearance for Issuing Permits.** Prior to the issuance of a Building Permit, the following requirements must be met to the satisfaction of the Chief Building Official:
- a. *Construction Plans.* This permit file number, CP02-072, shall be printed on all construction plans submitted to the Building Division.
  - b. *Emergency Address Card.* The project developer shall file an Emergency Address Card, Form 200-14, with the City of San José Police Department.
  - c. *Archaeology.* There shall be monitoring of site excavation activities to the extent determined by a qualified professional archaeologist to be necessary to insure accurate evaluation of potential impacts to prehistoric and/or historic resources.
    - (1) If no resources are discovered, the archaeologist shall submit a report to the Director of Planning, Building and Code Enforcement verifying that the required monitoring occurred and that no further mitigation is necessary.
    - (2) If evidence of any archaeological, cultural and/or historical deposits are found, hand excavation and/or mechanical excavation will proceed to evaluate the deposits for determination of significance as defined by CEQA guidelines. The archaeologist shall submit reports, to the satisfaction of the Director of Planning, describing the testing program and subsequent results. These reports shall identify any program mitigation that the Developer shall complete in order to mitigate archaeological impacts (including resource recovery and/or avoidance testing and analysis, removal, reburial and curation of archaeological resources).
    - (3) In the event that human remains and/or cultural materials are found, all project-related construction shall cease within a 50-foot radius in order to proceed with the testing and mitigation measures required. Pursuant to Section 7050.5 of the Health and Safety Code and Section 5097.94 of the Public Resources Code of the State of California:
      - (a) In the event of the discovery of human remains during construction, there shall be no further excavation or disturbance of the site or any nearby area reasonably suspected to overlie adjacent remains. The Santa Clara County Coroner shall be notified by the developer and shall make a determination as to whether the remains are native American. If the Coroner determines that the remains are not subject to his authority, he shall notify the Native American Heritage Commission, who will attempt to identify descendant of the deceased Native Americans. If no satisfactory agreement can be reached as to the disposition of the remains pursuant to this State law, then the landowner shall re-enter the human remains and items associated with Native American burials on the property in a location not subject to further subsurface disturbance.
      - (b) A final report shall be submitted to the Director of Planning prior to release of a

Certificate of Occupancy. This report shall contain a description of the mitigation programs and its results including a description of the monitoring and testing program, a list of the resources found, a summary of the resource analysis methodology and conclusions and a description of the disposition/curation of the resources. The report shall verify completion of the mitigation program to the satisfaction of the Director of Planning.

9. **Anti-Graffiti.** The applicant shall remove all graffiti from structures and fence surfaces within 48 hours of defacement.
10. **Collocation.** The applicant and wireless communication facility operator shall facilitate the future collocation of wireless communication antennas on this tower. The applicant and wireless communication facility operator shall notify the Director of Planning of any proposals by other wireless communication providers to collocate antennas on this tower. The notification shall occur within 30 days of receipt of the proposal, and shall include the file number of this Permit.
11. **Equipment Removal.** The applicant shall remove the wireless communications antennas and associated equipment enclosure from the site at such time as the equipment is no longer in use.

## CONDITIONS SUBSEQUENT

1. **Permit Expiration.** This Conditional Use Permit shall automatically expire two years from and after the date of adoption of the Resolution by the Planning Commission, or by the City Council on appeal, granting this Permit, if within such two-year period, the proposed use of this site or the construction of buildings has not commenced, pursuant to and in accordance with the provisions of this Conditional Use Permit. The date of adoption is the date the Resolution granting this Conditional Use Permit is approved by the Planning Commission. However, the Director of Planning may approve a Permit Adjustment to extend the validity of this Permit for a period of up to two years. The Permit Adjustment must be approved prior to the expiration of this Permit.
2. **Revocation, Suspension, Modification.** This Conditional Use Permit may be revoked, suspended or modified by the Planning Commission, or by the City Council on appeal, at any time regardless of who is the owner of the subject property or who has the right to possession thereof or who is using the same at such time, whenever, after a noticed hearing in accordance with Part 3, Chapter 20.44, Title 20 of the San José Municipal Code it finds:
  - a. A violation of any conditions of the Conditional Use Permit was not abated, corrected or rectified within the time specified on the notice of violation; or
  - b. A violation of any City ordinance or State law was not abated, corrected or rectified within the time specified on the notice of violation; or
  - c. The use as presently conducted creates a nuisance.
3. **Time Limit.** This Conditional Use Permit expires and has no further force or effect five years from



the date this Permit. At that time, that applicant/owner shall provide information to the City to determine if the wireless communications antenna is still needed, based on improvements in technology or availability of alternative building-mounted opportunities in the vicinity.

4. **Renewal.** The permit holder may seek renewal of a time-conditioned Conditional Use Permit by filing a timely renewal application on the form provided by the Director of Planning, Building and Code Enforcement. In order to be timely, an application for renewal must be filed more than 90 calendar days but less than 180 calendar days prior to the expiration of the Conditional Use Permit. Once a renewal application has been filed in a timely manner, the expiration date of the Conditional Use Permit is automatically extended until either the issuance or denial of the application for renewal has become final.

c: Building Division (2)

Engineering Services

San Jose Unified School District c/o Chuck Corr, 855 Lenzen Ave. San Jose CA 95126

Cingular Wireless c/o Ellen Magnie, 4420 Rosewood Drive Bldg. 2 Pleasanton, CA 94589

Ruth & Going c/o Zachary Carter, P.O. Box 26460 San Jose, CA 95159-6460

TE:yt/207-10